

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

REGINA ANKRAH and ISAAC OWUSU-  
AFRIYIE, as CO-EXECUTORS OF THE  
ESTATE OF ANGELINA OWUSU-AFRIYIE

PLAINTIFFS,

V.

THE UNITED STATES OF AMERICA,  
KENNETH K. GERWECK, M.D. AND  
SANDRA L. SALERNO, R.N.

DEFENDANTS.

CIVIL ACTION NO: 04-40249

## **PLAINTIFFS' OFFER OF JURISDICTIONAL PROOF**

NOW COMES the plaintiffs, Regina Ankrah and Isaac Owusu-Afriyie, as co-executors of the estate of Angelina Owusu-Afriyie and hereby submit the following offer of proof with respect to the federal subject matter jurisdiction over this case.

1. On July 20, 2005 this Court ordered plaintiffs to show cause as to whether the requirements of 28 U.S.C. § 2401(b) and 28 U.S.C. § 2675 have been complied with by the plaintiffs prior to filing suit. 28 U.S.C. § 2401(b) requires the plaintiffs to have filed a written claim with the appropriate federal agency prior to filing suit. On March 10, 2004 plaintiffs forwarded their “Claim for Damage, Injury or Death” to the Department of Health and Human Services. (Exhibit A).

2. 28 U.S.C. § 2675(a) expressly prevents the plaintiffs from filing an action against the United States seeking money damages until (a) the plaintiffs have presented the written claim to the appropriate federal agency and (b) receive a final denial of the

claim by the agency in writing by certified or registered mail. The statute further states, “[t]he failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant anytime thereafter, be deemed a final denial of the claim for purposes of this section.” The plaintiffs did not receive a final denial of the claim within six months from the date of presentment and therefore, elected to deem the claim denied pursuant to 28 U.S.C. § 2675(a). In fact, plaintiffs waited nine months before filing their lawsuit against the United States. On April 14, 2005 the Department of Health and Human Services officially denied the plaintiff’s claim. (Exhibit B).

3. In conclusion, the plaintiffs respectfully submit that they have complied with 28 U.S.C. § 2401(b) and 2675 as outlined above and as shown in the attached Exhibits.

Exhibits will be sent via regular mail to Court and defense counsel.

RESPECTFULLY SUBMITTED,  
THE PLAINTIFFS,  
BY THEIR ATTORNEY,

/s/ David W. Sucheki  
ELIZABETH N. MULVEY  
DAVID W. SUCHECKI  
CROWE AND MULVEY, L.L.P.  
141 TREMONT STREET  
BOSTON, MA 02111  
(617) 426-6006

**CERTIFICATE OF SERVICE**

I, David W. Suchecki, hereby state that on ***Friday, July 29, 2005***, I served a copy of the following:

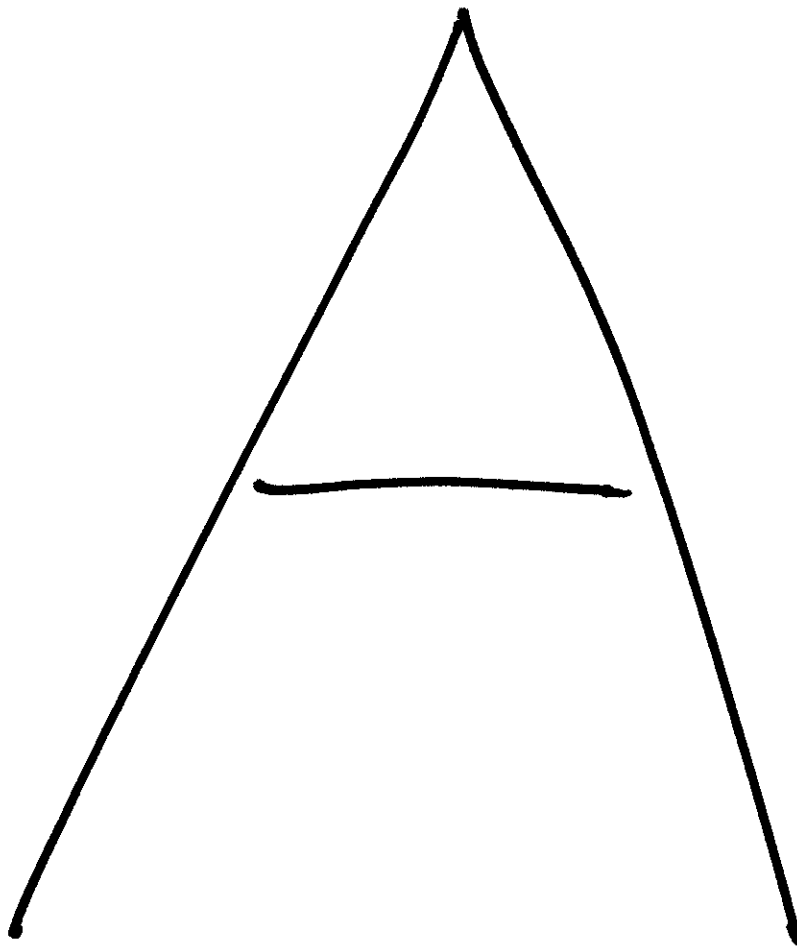
- ***Plaintiffs' Offer of Jurisdictional Proof***

on the defendant(s), via electronic mailing (and exhibits via regular mail), addressed to the following parties of interest:

Gina Walcott-Torres  
Assistant U.S. Attorney  
U.S. Department of Justice  
John Joseph Moakley United States Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210

Heather G. Beattie, Esquire  
Morrison, Mahoney, LLP  
1500 Main Street  
P.O. Box 15387  
Springfield, MA 01115-5387

/s/ David W. Suchecki  
David W. Suchecki





CROWE & MULVEY, LLP

Attorneys at Law

PHILIP J. CROWE, JR.  
ELIZABETH N. MULVEY<sup>Δ\*†‡</sup>  
FLORENCE A. CAREY<sup>†</sup>  
DAVID W. SUCHECKI<sup>\*</sup>  
MICHAEL J. HARRIS<sup>\*</sup>  
SHARON D. RANDALL, RN, JD  
DENISE M. KIGHT, CNM, MSN  
KATHARYN M. MCCORMACK, RN, BSN

ALSO ADMITTED:  
Δ MAINE  
\* NEW HAMPSHIRE  
† RHODE ISLAND  
‡ CONNECTICUT

March 10, 2004

Claim for Damage, Injury, or Death  
Room 5C - 10, Parklawn Building  
5600 Fisher's Lane  
Rockville, MD 02857

RE: Regina Ankrah And Isaac Owusu-Afriyie, As Co-Executors of The Estate of  
Angelina Owusu-Afriyie Vs. Kenneth K. Gerweck, M.D., Lise J. Tardif, M.D.,  
And Sandra L. Salerno, R.N.,

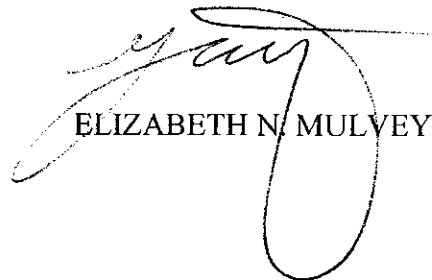
Dear Sir/Madam:

Enclosed for filing please find the following:

Claim for Damage, Injury, or Death

Thank you for your attention to this matter.

Very truly yours,



ELIZABETH N. MULVEY

ENM\lb\enc.

**CLAIM FOR DAMAGE,  
INJURY, OR DEATH**

**INSTRUCTIONS:** Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED  
OMB NO.  
1105-0008  
EXPIRES 5-31-05

**1. Submit To Appropriate Federal Agency:**

Claim Branch - Department of Health and Human  
Services  
Room 5C - 10, Parklawn Building  
5600 Fisher's Lane, Rockville, MD 02857

**2. Name, Address of claimant and claimant's personal representative, if any.** (See instructions on reverse.) (Number, street, city, State and Zip Code)  
Regina Ankrah and Isaac Owusu-Afriyie,  
As Co-Executors of the Estate of  
Angelina Owusu-Afriyie

**3. TYPE OF EMPLOYMENT**  
MILITARY CIVILIAN **XX**

**4. DATE OF BIRTH**  
8/12/02

**5. MARITAL STATUS**  
S

**6. DATE AND DAY OF ACCIDENT**  
8/11/02 - 8/12/02

**7. TIME (A.M. OR P.M.)**

**8. Basis of Claim** (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) The Defendants, Kenneth K. Gerweck, M.D., and Lise J. Tardif, M.D., failed to consult the obstetric team for the abnormal fetal heart tracing in a poorly progressing labor complicated by meconium stained fluid and chorioamnionitis. The Defendants' Nurse Salerno failed to intervene on the patient's behalf when she recognized abnormalities in the fetal heart tracing, failed to notify the patient's physician and did not attempt intrauterine resuscitation measures. Had the Defendants rendered appropriate care, Angelina would have been born without injury.

**9. PROPERTY DAMAGE**

**NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT** (Number, street, city, State, and Zip Code)

**BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED.** (See instructions on reverse side)

**10. PERSONAL INJURY/WRONGFUL DEATH**

**STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT**

Wrongful death due to fetal distress.

**11. WITNESSES**

**NAME**

**ADDRESS** (Number, street, city, State, and Zip Code)

**12. (See instructions on reverse)**

**AMOUNT OF CLAIM (in dollars)**

**12a. PROPERTY DAMAGE**

**12b. PERSONAL INJURY**

**12c. WRONGFUL DEATH**

**12d. TOTAL** (Failure to specify may cause forfeiture of your rights.)

5 Million

5 Million

**I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM**

**13a. SIGNATURE OF CLAIMANT** (See instructions on reverse side.)

**13b. Phone number of signatory**

**14. DATE OF CLAIM**

**CIVIL PENALTY FOR PRESENTING  
FRAUDULENT CLAIM**

**CRIMINAL PENALTY FOR PRESENTING FRAUDULENT  
CLAIM OR MAKING FALSE STATEMENTS**

The claimant shall forfeit and pay to the United States the sum of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)

Imprisonment for not more than five years and shall be subject to a fine of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the United States. (See 18 U.S.C.A. 287.)

15-108

NSN 7540-00-614-4046

STANDARD FORM 95 (Rev. 7-85)  
PRESCRIBED BY DEPT. OF JUSTICE  
28 CFR 14.2

Previous editions not usable

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the General Counsel  
General Law Division

330 Independence Avenue, S.W.  
Rm. 4760 Wilbur J. Cohen Federal Building  
Washington, DC 20201

**CERTIFIED - RETURN  
RECEIPT REQUESTED**

APR 14 2005

Elizabeth N. Mulvey, Esq.  
CROWE & MULVEY, LLP.  
141 Tremont Street  
Boston, Massachusetts 02111

Re: Administrative Tort Claim of Regina and Isaac Owusu-Afriyie, as Co-Executors  
of the Estate of Angelina Owusu-Afriyie, Claim No. 04-0214

Dear Ms. Mulvey:

You filed an administrative tort claim on March 16, 2004, on behalf of your clients, Regina and Isaac Owusu-Afriyie, Co-Executors of the Estate of Angelina Owusu-Afriyie, pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2401(b), 2671-80. In the claim, your clients alleged that Lisa Tardif, M.D., an employee of the Family Health Center, and other defendants provided negligent care and treatment to Mrs. Ankrah, resulting in the death of Angelina Owusu-Afriyie.

This letter constitutes the notice of final determination on claimants' administrative tort claim, as required by 28 U.S.C. § 2401(b). On December 13, 2004, you filed suit on behalf of your clients in the United States District Court for the District of Arizona pursuant to 28 U.S.C. § 2675 (a); accordingly, their claim is thus denied.

I am required by law to inform you that if your clients are dissatisfied with this determination, they are entitled to file suit against the United States in the appropriate federal district court within six (6) months from the date of the mailing of this determination. 28 U.S.C. § 2401(b).

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Barsoomian", is written over a horizontal line.

Lisa Barsoomian  
Deputy Associate General Counsel  
Claims and Employment Law Branch